

DEPOSITION OF KIRK PELHAM

October 3, 2005

CHAD HOGAN v. CITY OF MONTGOMERY, ET AL.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHAD HOGAN,

Plaintiff,

vs.

CIVIL ACTION AT LAW
CASE NO. 2:05CV687

CITY OF MONTGOMERY, et al.,

Defendants.

* * * * *

DEPOSITION OF LEONARD KIRK PELHAM, taken
pursuant to stipulation and agreement before
Mallory N. McCutchin, Court Reporter and
Commissioner for the State of Alabama at Large,
in the Law Offices of Thomas, Mean, Gillis &
Seay, 3121 Zelda Court, Montgomery, Alabama, on
Monday, October 3, 2005, commencing at
approximately 1:09 p.m.

* * * * *

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<p>1 A. It's her second marriage.</p> <p>2 Q. Is her former husband, does he still live in</p> <p>3 the area?</p> <p>4 A. Yes.</p> <p>5 Q. What is his name?</p> <p>6 A. Christopher Keith Bailey.</p> <p>7 Q. Does he live in Montgomery?</p> <p>8 A. Yes.</p> <p>9 Q. Mr. Pelham, give me your current home</p> <p>10 address, please, sir.</p> <p>11 A. 3803 Adams Place, Millbrook, 36054.</p> <p>12 Q. How long have you been at that address?</p> <p>13 A. A little over a year.</p> <p>14 Q. Anybody besides you and your wife and your</p> <p>15 step-children live at that address?</p> <p>16 A. No.</p> <p>17 Q. As best you can, in the last ten years, give</p> <p>18 me a list of all the addresses that you've</p> <p>19 had.</p> <p>20 A. 2025 Briarwood Street, Prattville, Alabama,</p> <p>21 36067, I believe.</p> <p>22 Q. How long did you live there?</p> <p>23 A. Six months.</p>	<p>1 A. Yes.</p> <p>2 Q. How long did you work for the police</p> <p>3 department, Montgomery Police Department?</p> <p>4 A. Two years.</p> <p>5 Q. Now, were you a detective with them the whole</p> <p>6 time you were with them, or did you start out</p> <p>7 as patrol?</p> <p>8 A. No. I -- I was on third shift patrol.</p> <p>9 Q. Just as far as your employment history with</p> <p>10 Montgomery, let's just go into that. Do you</p> <p>11 remember the month of the year that you</p> <p>12 started?</p> <p>13 A. November 2000 -- 2002.</p> <p>14 Q. Okay. Started at third-shift patrol?</p> <p>15 A. Right.</p> <p>16 Q. How long were you on third-shift patrol?</p> <p>17 A. A year and a half, approximately.</p> <p>18 Q. All right. And you were promoted to</p> <p>19 detective from third-shift patrol?</p> <p>20 A. Yes.</p> <p>21 Q. Do you remember the month and year when you</p> <p>22 were promoted to detective, or at least your</p> <p>23 best estimate?</p>
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<p>1 Q. And that was immediately preceding this</p> <p>2 current address?</p> <p>3 A. Right.</p> <p>4 Q. Where did you live before that?</p> <p>5 A. 18 -- I'm sorry. 1537 Westminster Drive,</p> <p>6 Montgomery, 36117.</p> <p>7 Q. How long did you live there?</p> <p>8 A. About two years.</p> <p>9 Q. Remember what your address was before that?</p> <p>10 A. 1830 Windsor Downs Court, Montgomery, 36117.</p> <p>11 Q. Remember how long you were there?</p> <p>12 A. About three years.</p> <p>13 Q. Can you remember your address before that?</p> <p>14 A. 7101 Fair Oaks Court, Montgomery, 36117. Was</p> <p>15 there about five years.</p> <p>16 Q. Okay. Mr. Pelham, are you currently working?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Where are you working?</p> <p>19 A. Carquest Distribution Center.</p> <p>20 Q. How long have you been working for Carquest?</p> <p>21 A. Three months.</p> <p>22 Q. Is that the first job you've had since you</p> <p>23 left working for the police department?</p>	<p>1 A. I couldn't tell you.</p> <p>2 Q. Sometime in '04, I guess, if my math is</p> <p>3 remotely right.</p> <p>4 A. Yeah.</p> <p>5 Q. Had you worked as a police officer before you</p> <p>6 came to Montgomery anywhere?</p> <p>7 A. No. No.</p> <p>8 Q. When you were on third-shift patrol, did you</p> <p>9 receive any interim promotions while you were</p> <p>10 on third shift patrol other than some pay</p> <p>11 raise?</p> <p>12 A. Just merit raises, that's it.</p> <p>13 Q. How many merit raises did you receive while</p> <p>14 you were on third-shift patrol?</p> <p>15 A. Two, I believe.</p> <p>16 Q. Were you subject to any disciplinary actions</p> <p>17 or anything while you were on third-shift</p> <p>18 patrol?</p> <p>19 A. No.</p> <p>20 Q. Were you ever subject to any disciplinary</p> <p>21 actions when you were a detective?</p> <p>22 A. No.</p> <p>23 Q. Mr. Pelham, what's your date of birth?</p>

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1 regarding particular detail. But it might be
 2 easier just to start out just by asking to
 3 recite as best you can, what your first
 4 memory is of that night and who you spoke to
 5 and how the night developed from the moment
 6 you first heard about the burglary call at
 7 Arnaud Meats that night. And just if you
 8 would, just tell me everything you remember
 9 about it.

10 A. All right. I was sitting at any computer
 11 eating a taco. The call went out -- or the
 12 alarm went out to Arnaud's Quality Meats. It
 13 was storming real bad. I didn't think
 14 nothing of it. The alarm had been going off
 15 all night, other alarm.

16 Q. Keep talking. I'm listening. I'm just going
 17 to close these blinds.

18 A. And a K-9 officer, Officer Gordon, got on the
 19 radio, advised he was the first one -- or he
 20 was the first one to respond to the scene.
 21 Advised he saw a vehicle in the parking lot.
 22 I can't remember what -- what kind of vehicle
 23 it was -- with a few -- two or three black

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1 males inside. Stated he pulled into the
 2 parking lot, and the vehicle drove off
 3 down -- headed down Wares Ferry Road, I
 4 believe, or they cut through the trailer park
 5 behind the store, headed to Wares Ferry
 6 Road. He -- he -- he then advised he was
 7 following the car, and there were a couple of
 8 other units that said that they were en route
 9 to the store.

10 And I believe the next unit on the scene
 11 was Officer Fike or Officer Forbus. I'm not
 12 -- not to sure. And they advised that the
 13 window on the right side of the business had
 14 been busted out. At that time, Officer
 15 Gordon gave his whereabouts and stated that I
 16 believe he stated he was initiating a traffic
 17 stop, and he got some other units with him to
 18 assist him. At that time, the vehicle was on
 19 Wares Ferry Road, refusing to stop. And that
 20 ended up -- the vehicle he was pursuing ended
 21 up, I believe, running into a fence or a tree
 22 at Pelzer Avenue and Wareingwood Avenue.

23 Q. Yes, sir.

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1 A. While all this unfolded, I about that time --
 2 well, when the officer said that the window
 3 had been busted out, I had left the police
 4 department, started in that direction.

5 Q. Let me stop you. You talked to either
 6 Officer Fike or Forbus on the radio before
 7 you got to the scene; is that correct?

8 A. No. I heard them on the channel one radio
 9 saying that the window had been busted out.

10 Q. But you didn't speak with them at that point?

11 A. But I didn't speak with them at that point.

12 Q. I'm sorry. Continue.

13 A. Once I heard that, I got in my car. Started
 14 that way. While I was on my way to the
 15 business, that's when the -- the suspect
 16 vehicle crashed into a -- a fence.

17 About that time -- not long after that,
 18 I arrived at Arnaud's Quality Meat and made
 19 contact with Officer Forbus and Fike. And I
 20 pulled up, just so happened to pull up on the
 21 right side in front of the window, and walked
 22 around to the front of the business. Officer
 23 Forbus and Fike had advised me that it didn't

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1 look like anything had been -- been tampered
 2 with. Didn't look like anything had been
 3 gone. And they had already -- they had
 4 requested a key holder to come out. The
 5 owner of the business to come out and verify
 6 if -- if there had been anything missing or
 7 if there had been a burglary. At that time
 8 Anthony Arnaud, the owner of Arnaud's Quality
 9 Meat, pulled up; and I made contact with him,
 10 and asked him to go into his store and
 11 inventory it. See if anything had been
 12 missing. He went inside, come back out and
 13 told me that he left the window open, because
 14 the window wasn't broken. He left it broken
 15 because the -- his air conditioner was broke
 16 and he didn't want it to be real hot the next
 17 morning. Had something going on early the
 18 next morning. Some kind of breakfast or
 19 something. Didn't want it to be real hot so
 20 he left the window open. And nothing was
 21 missing. He said he had some cash laying on
 22 the counter, it was still there. He believed
 23 nobody -- nobody had gotten in at that time.

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<p>1 I got on my radio, made contact with Sergeant 2 Johnson, with my supervisor, Lieutenant Cook, 3 let him know that there wasn't a burglary and 4 that the owner had left the window up. And 5 he advised me to make contact with third- 6 shift sergeant, Sergeant Johnson, to let him 7 know that there was -- was no burglary. So I 8 then called on my radio Sergeant Johnson and 9 let him know what the owner had told me, that 10 he had left the window open, and nothing was 11 missing, didn't think anybody got in. 12 At that time, Sergeant Johnson, he got 13 irate with me like I didn't want -- didn't 14 want to work the case. Like I was trying to 15 push it off and didn't want to work it. 16 Said, you mean to tell me we got a -- we got 17 a dog bite and no burglary? And I said, 18 Well, that's what the owner is advising me. 19 You know, he left the window open. And it's 20 raining, you know, raining real hard. If 21 anybody had got in, there would be foot 22 prints all over the place. Didn't hear 23 anything back from him at that time.</p>	<p>1 that I talked with. He said that him and his 2 buddies had been at the pool hall -- I 3 believe it's called The Break Room -- right 4 there at Lagoon Park Shopping Center. Said 5 they were playing pool. When they got -- 6 when they left, they were heading over -- 7 they were going to a friend's house. They 8 pulled -- he said they had pulled into the 9 parking lot of Arnaud's Quality Meats because 10 it was raining so hard. They couldn't see -- 11 the driver couldn't see out of the 12 windshield. While they were there, one of 13 them lit a -- a joint or a blunt, or one of 14 the two. And they sat in the parking lot. 15 Q. Mr. Pelham, just to stop you for a second. 16 Just to make the record clear, when you say a 17 joint or blunt, you mean -- 18 A. Marijuana. 19 Q. Marijuana. 20 A. Right. 21 Q. Go ahead. I'm sorry. 22 A. So they sat in the parking lot and were 23 smoking marijuana. And he then stated that</p>
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<p>1 I'd heard -- while all this was going 2 on, I was scanning channel one radio 3 traffic. I'd heard they had one or two 4 subjects in custody. I don't know if it was 5 three or four total, but one or two was in 6 the ditch, and the water level was real 7 high. He was in the ditch I guess swimming, 8 trying to get away from officers. At that 9 time, I had Mr. Arnaud secure his business 10 and follow me back to police headquarters. 11 At which time we went to -- we went to police 12 headquarters and Mr. Hogan and another -- 13 another black male subject was transported to 14 headquarters, and I believe one or two other 15 ones got away. 16 Once I got to headquarters, I separated 17 the two, Mr. Hogan and another -- another guy 18 that was with him. And there might have been 19 three, I can't remember. Anyway, I separated 20 how many of them there was and began 21 questioning them, you know, as to what they 22 were doing in the parking lot, what went on. 23 Mr. Hogan was the first -- the first subject</p>	<p>1 one of his -- one of his buddies saw what he 2 believed to be a K-9 vehicle pull into the 3 parking lot, which was Officer Gordon. They 4 then -- they then left the parking lot. And 5 he said, you know, they were scared that they 6 were going to get caught with smoking the 7 marijuana. And he stated that's when they 8 left and ran from the K-9 officer and hit the 9 fence. That's how he ended up at 10 headquarters. 11 I then talked with the other subject, 12 and he stated the same thing. They were at 13 the pool hall and left and couldn't see. So 14 they pulled in the parking lot smoking 15 marijuana. Saw the K-9 officer and left. 16 That's how he ended up at headquarters. And 17 then -- I think there was a third one. I 18 can't be too sure. 19 Anyway, the stories panned out. I 20 even -- I even called The Break Room, the 21 pool hall and talked with -- I believe it was 22 the -- the door -- the door manager or 23 whatever you want to call it. I guess</p>

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1 somebody who checks your ID or something like
2 that. And he stated that they were in
3 there. They'd just left, you know, a little
4 while ago.

5 Q. When he said little while, do you remember
6 how he defined little while?

7 A. I can't remember that. He might not have
8 even said a little while ago. He -- he said
9 that they had recently left. They were
10 there.

11 Q. Did you write his name down on any reports
12 anywhere?

13 A. I'm sure it's in the case file.

14 Q. Go ahead. I'm sorry.

15 A. I then let my supervisor know, Lieutenant
16 Cook, that, you know, I didn't think we were
17 going to have a burglary. These guys'
18 stories panned out. I -- I -- after I talked
19 with the last subject, find -- find out his
20 side of the story, I then went to the Anthony
21 Arnaud and asked him again, you know, you
22 sure there's, you know, nothing missing? At
23 that time, you know, he's in police

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1 headquarters. And he said no. He just
2 wanted to go home. He didn't want to put the
3 wrong guy in jail or put somebody in jail for
4 something they didn't do.

5 So I called my Lieutenant Ron Cook, and
6 he advised my to see -- wait -- wait to get a
7 statement from the officers. You know, to
8 see if they -- to see if they saw enough, you
9 know, to charge -- to charge these guys with
10 a burglary. You know, did they see them
11 coming out of the window or carrying
12 something that maybe Mr. Arnaud didn't notice
13 was missing.

14 So I waited -- waited for the officers
15 to get there. And Officer Gordon had typed
16 up a statement. I let him know that, you
17 know, the owner didn't -- didn't notice
18 anything was missing. The subjects that were
19 in custody --

20 Q. Let me to stop you. You said you let him
21 know. Who are you speaking of when you say
22 you let him know?

23 A. Officer Gordon.

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1 Q. Okay. Go ahead.

2 A. Let him know that the subject -- you know,
3 Mr. Arnaud didn't see anything missing. Said
4 he left the window open. His store wasn't
5 burglarized. And the subjects all were
6 separated and had a -- a similar story. I --
7 I told Officer Gordon that I needed -- I
8 would need a statement from him as to what he
9 saw when he pulled into the parking lot. So
10 he typed up a statement.

11 Q. Let me stop you, again. You're telling
12 Officer Gordon this at the police department
13 in person, this conversation you've just
14 described, or was this on the radio?

15 A. I don't remember. It could have been on --
16 he was on his way back to the police
17 department. At -- and it was either on the
18 radio or when he got back, I let him know it.

19 Q. All right. I'm sorry. Go ahead.

20 A. At that time he -- I believe he got on my
21 computer and typed up a -- a statement. And
22 when he was done, he gave it to me. And I
23 read it, and the elements -- the elements for

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1 burglary wasn't there. He said that he had
2 pulled into the -- well, the alarm call had
3 went out. He had pulled into the parking lot
4 and observed a -- the suspect's vehicle, one
5 of the door close -- one of the doors on the
6 vehicle closed, and drive away from the
7 business. Which, you know, the elements for
8 the burglary weren't there. At which time I
9 let my supervisor, Lieutenant Cook, know that
10 his statement wasn't sufficient.

11 At that time Lieutenant Cook called
12 Officer Gordon's supervisor, Lieutenant
13 Caulfield, K-9 supervisor, let him know his
14 officer's statement didn't have the elements
15 of burglary. And Lieutenant Caulfield told
16 Lieutenant Cook that he would -- he would
17 talk to his officer and get another
18 statement.

19 Q. Let me stop you right there. You said you
20 heard the conversation between Lieutenant
21 Caulfield and Lieutenant Cook?

22 A. That -- that conversation.

23 Q. Were they both in person talking to each

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1 other, or was this something over the walkie-
2 talkie or --
3 A. They were -- it was over the I-Link, the
4 radios you can --
5 Q. So you could hear the conversation that's
6 incoming?
7 A. Right. Kind of like a Nextel, you can --
8 Q. I gotcha. Okay. Go ahead.
9 A. At that time, Officer Gordon -- I mean, I'm
10 assuming Lieutenant Caulfield called Officer
11 Gordon because Officer Gordon said he was
12 going to do another statement. He then typed
13 another statement. Said that he had pulled
14 into the parking lot, observed a vehicle in
15 the parking lot, and a black male standing
16 next to the vehicle by the window, I believe.
17 Q. I'm going to stop you for a second. What did
18 the first statement say as opposed to the
19 second statement? What was the major
20 difference between the two?
21 A. The first statement said I pulled into the
22 parking lot, observed a vehicle which
23 passenger -- I observed a vehicle in the

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1 parking lot. The passenger's door then
2 closed and the vehicle drove off. The second
3 statement said, I pulled in the parking lot,
4 observed a vehicle, and a black male standing
5 outside the vehicle next to the window, which
6 was believed to be the point of entry. And
7 that was the only two things that changed.
8 Q. All right.
9 A. At that time, Officer Gordon gave me a
10 statement. I read the statement. And still,
11 the elements weren't there. It was a small
12 twist getting closer to -- to the elements.
13 But it -- it wouldn't -- wouldn't support
14 burglary.
15 So then I called Lieutenant Cook, let
16 him know the statement, you know, the
17 elements still weren't there. And -- and I'm
18 assuming he called Lieutenant Caulfield
19 then. I -- I didn't hear that conversation.
20 However, he said that Officer Gordon was --
21 was going to come back and fix it. So
22 Officer Gordon come back and did a third
23 statement. And the third statement, I had

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1 pulled into the parking lot -- I had pulled
2 into the parking lot and observed a vehicle
3 in the parking lot with a black male coming
4 from the window -- coming from -- coming from
5 the window of the business, enter the vehicle
6 and drive off. That was the only thing that
7 was changed there. Still after the third
8 time, I read the statement. Elements weren't
9 there.
10 Q. Mr. Pelham, let me stop you again. I
11 apologize. Just so I can make sure I
12 understand this. Okay. You're saying that
13 Officer Gordon wrote three different
14 statements?
15 A. Typed three different statements.
16 Q. Okay. And tell me again just the transition,
17 what was in the first statement, just what
18 got changed in the second statement, what you
19 say got changed in the third statement. What
20 was the difference between the three
21 statements?
22 A. The first statement said he saw the vehicle
23 in the parking lot, a door closed, the

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1 vehicle the drove off. The second statement,
2 the difference was he saw the vehicle in the
3 parking lot, a black male standing outside
4 the vehicle next to the window, got into the
5 vehicle and the vehicle drove off. Third
6 statement, difference was, he pulled into the
7 parking lot, saw the vehicle in the parking
8 lot, black male subject coming from the
9 window of the business. Got into the vehicle
10 and the vehicle drove off.
11 Q. Okay. So you're saying the final statement
12 said that he actually saw the black male
13 coming from the window?
14 A. Coming from the window.
15 Q. I'm sorry. Keep going.
16 A. At that time I read it, elements weren't
17 there. I can't remember how it was worded
18 but it -- it wasn't coming out of the window,
19 you know.
20 Anyway the elements weren't there. So I
21 then let Lieutenant Cook know.
22 Q. Let me ask this too because this is as good a
23 place as any. Because you said a few times

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1 you didn't think the elements were there. On
2 the third statement why did you think the
3 elements weren't there on that final
4 statement?
5 A. Well, the way it was -- the way it was
6 worded, observed a black male coming from the
7 window. The way he had it worded was not
8 coming out of the window but coming from the
9 direction of the window. You know, not
10 climbing out of the window but coming from
11 the window. So that's, you know elements
12 aren't there. And in the back of my mind
13 being the third statement.
14 Q. Okay. And let me ask you this one thing.
15 I'm asking you as an officer what you would
16 think if in light of the fact that a burglar
17 alarm had sounded, that I believe was
18 signaled by a motion detector; is that
19 correct?
20 A. Yeah.
21 Q. And in light of the fact that they were --
22 I'm going to give you a hypothetical. Had
23 you seen a vehicle in the area and you'd seen

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1 someone coming -- I'm going to use your
2 words -- from the window -- not necessarily
3 out of the window but from the window, you
4 then approached that vehicle and they take
5 off and don't stop, and then you subsequently
6 find a gun, a ski mask, and a flashlight in
7 the car, would that not altogether add up to
8 probable cause to believe that a burglary had
9 occurred?
10 A. Oh, yeah, yeah, it would.
11 MR. NELMS: Object to the form.
12 Q. We'll do that a few times. You can still
13 answer.
14 MS. CONNER: You can answer. But, you
15 know, just let them do their
16 thing.
17 THE WITNESS: Okay.
18 MS. CONNER: Okay. You can answer.
19 THE WITNESS: Okay.
20 MS. CONNER: Do you remember the
21 question?
22 Q. I'll repeat it if you need to.
23 A. Had, in fact, it not been -- I mean, it was

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1 storming real, real -- I mean it was a
2 terrible storm. The alarm had gone off once
3 before prior to this -- this incident.
4 Q. Do you remember what sensor had tripped the
5 alarm before?
6 A. The same motion.
7 Q. Is same motion sensor?
8 A. Right. And -- and I fail to mention
9 Mr. Arnaud stated -- he does serve meat. He
10 stated that he was embarrassed to say, but he
11 had big rats. And goes out there all the
12 time because big rats set off his motion
13 detector. However, we were answering alarm
14 calls at night due to the weather.
15 Now, as far as a vehicle leaving the
16 area and -- and, you know, having the gun and
17 a ski mask and all that, yes, you know,
18 that's -- looks like somebody is up to no
19 good. But, you know, it takes three
20 statements to -- to even get remotely close
21 to coming from the window. I mean, I knew,
22 you know, that was my job to -- are the
23 elements there? You know, did this burglary

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1 happen? And, you know, I had the owner
2 telling me nobody got in. Nothing is
3 missing. I left the window up, you know.
4 You know, they had they had a couple of black
5 males in the car with a gun, some dope, and a
6 ski mask. There was no burglary.
7 Q. Weren't there some flower pots or something
8 on the windowsill that were knocked off?
9 A. There -- there were. I failed to mention
10 that as well.
11 MR. NELMS: Object to the form.
12 A. There were some -- there were two or three
13 flower pots and like a -- some type of
14 figurine like a porcelain figurine. When I
15 pulled up, they were laying on the ground up
16 under the window. I asked when -- when
17 Officer Forbus and Officer Fike told me it
18 didn't look like anybody got in, I asked
19 them, I said, well, what is that right
20 there? Did that -- did that come from the
21 window? And they said yeah, that was on the
22 windowsill. We moved it to get in. And it
23 wasn't broken laying on the ground. It was

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<p>1 picked up and placed on the ground.</p> <p>2 Q. Are Officer Forbus and Officer Fike, are they</p> <p>3 K-9 officers?</p> <p>4 A. No, they're third-shift patrol officer.</p> <p>5 Q. So they're just normal patrol?</p> <p>6 A. Right</p> <p>7 Q. Go ahead. I'm sorry.</p> <p>8 A. They had said that it was moved to be put --</p> <p>9 it was moved to get -- to get in so the</p> <p>10 building could be cleared. So they could</p> <p>11 clear the building, make sure nobody was in</p> <p>12 there.</p> <p>13 Q. So they told you that they took the thing</p> <p>14 off, the plants off or the figurine?</p> <p>15 A. I don't know if they -- it seems like Fike --</p> <p>16 Fike told me that -- there was a lot of --</p> <p>17 there was a lot of units there, due to the</p> <p>18 pursuit and all. And it seems -- I want to</p> <p>19 say that K-9 -- there was a K-9 officer that</p> <p>20 was actually the first officer in the</p> <p>21 business because they clear it with their dog</p> <p>22 first. You know, they're not -- they don't</p> <p>23 normally send an officer in there. If they</p>	<p>1 this. And the elements aren't there. I mean</p> <p>2 probable cause is there. Your reasonable</p> <p>3 suspicion is there. He then said, well, let</p> <p>4 me call Caulfield. So he called Lieutenant</p> <p>5 Caulfield and Caulfield told -- this is</p> <p>6 coming from Lieutenant Cook. He told me that</p> <p>7 Caulfield told him his officer was just</p> <p>8 having an articulation problem. Having a</p> <p>9 problem putting -- putting what he saw on</p> <p>10 paper.</p> <p>11 Said he was just having an articulation</p> <p>12 problem putting down on paper what he saw.</p> <p>13 At which time, he said just the -- you know,</p> <p>14 the burden lies on K-9. You know just work</p> <p>15 the burglary, and K-9 will be the ones that,</p> <p>16 you know, testify to what they saw. You</p> <p>17 know, the burden -- burden lies on them. And</p> <p>18 I asked, well -- I asked Lieutenant Cook,</p> <p>19 well -- who, you know, who do I charge with</p> <p>20 burglary. And he calls Lieutenant Caulfield</p> <p>21 and asks him, and he says, the one that's</p> <p>22 been bitten. Usually, we charge, you know --</p> <p>23 Q. Let me stop you again, too. Are we back on</p>
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<p>1 got a dog, they'll send their dog in first.</p> <p>2 And it seemed like he said they put it on the</p> <p>3 ground and they sent the dog in. And they</p> <p>4 followed behind him. I -- I don't know how</p> <p>5 he worded that.</p> <p>6 Q. Did he say he saw them -- that happen or he</p> <p>7 was just assuming?</p> <p>8 A. He was just assuming.</p> <p>9 Q. You don't know what he based that statement</p> <p>10 on?</p> <p>11 A. I don't know. He just said that it was put</p> <p>12 down on the ground so the building could be</p> <p>13 cleared. The business could be cleared.</p> <p>14 Q. But you didn't clarify with him about how he</p> <p>15 obtained that information?</p> <p>16 A. He was there. I'm assuming he saw it.</p> <p>17 Q. Okay. But you didn't ask him if he saw it?</p> <p>18 A. I can't remember if I did or not.</p> <p>19 Q. Okay. I'm sorry. Go ahead.</p> <p>20 A. After the third statement was written and I'd</p> <p>21 read it, I'd called Lieutenant Cook. Let him</p> <p>22 know, you know, this is the third statement.</p> <p>23 You know, I don't feel comfortable with</p>	<p>1 the Southern Link walkie-talkie again or how</p> <p>2 is this conversation occurring between</p> <p>3 between Caulfield and Cook?</p> <p>4 A. I don't remember. I think he called him on</p> <p>5 the telephone that time.</p> <p>6 Q. Well, how do you know what Lieutenant</p> <p>7 Caulfield said to Lieutenant Cook?</p> <p>8 A. I was sitting in his office. You know, he --</p> <p>9 he said, which one do we charge? And when he</p> <p>10 got off the phone he said the one that's been</p> <p>11 bitten.</p> <p>12 Q. Lieutenant Cook said that?</p> <p>13 A. Right.</p> <p>14 Q. Okay. Are you saying that Lieutenant</p> <p>15 Caulfield told Lieutenant Cook to charge the</p> <p>16 one that's been bitten?</p> <p>17 A. Right. He asked -- I asked Lieutenant Cook,</p> <p>18 I said, which one do I charge with burglary.</p> <p>19 He said, well, I don't know. Let me call</p> <p>20 Caulfield. So he call Caulfield. Says, hey,</p> <p>21 which one of these guys do we charge? Of</p> <p>22 course, I didn't hear that. He hangs up the</p> <p>23 phone. He says the one that's been bitten.</p>

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21 business because they clear it with their dog
22 first. You know, they're not -- they don't
23 normally send an officer in there. If they

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3 ground and they sent the dog in. And they
4 followed behind him. I -- I don't know how
5 he worded that.
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7 was just assuming?
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12 down on the ground so the building could be
13 cleared. The business could be cleared.
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15 obtained that information?
16 A. He was there. I'm assuming he saw it.
17 Q. Okay. But you didn't ask him if he saw it?
18 A. I can't remember if I did or not.
19 Q. Okay. I'm sorry. Go ahead.
20 A. After the third statement was written and I'd
21 read it, I'd called Lieutenant Cook. Let him
22 know, you know, this is the third statement.
23 You know, I don't feel comfortable with

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1 this. And the elements aren't there. I mean
2 probable cause is there. Your reasonable
3 suspicion is there. He then said, well, let
4 me call Caulfield. So he called Lieutenant
5 Caulfield and Caulfield told -- this is
6 coming from Lieutenant Cook. He told me that
7 Caulfield told him his officer was just
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10 paper.
11 Said he was just having an articulation
12 problem putting down on paper what he saw.
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14 the burden lies on K-9. You know just work
15 the burglary, and K-9 will be the ones that,
16 you know, testify to what they saw. You
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19 well -- who, you know, who do I charge with
20 burglary. And he calls Lieutenant Caulfield
21 and asks him, and he says, the one that's
22 been bitten. Usually, we charge, you know --
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1 the Southern Link walkie-talkie again or how
2 is this conversation occurring between
3 between Caulfield and Cook?
4 A. I don't remember. I think he called him on
5 the telephone that time.
6 Q. Well, how do you know what Lieutenant
7 Caulfield said to Lieutenant Cook?
8 A. I was sitting in his office. You know, he --
9 he said, which one do we charge? And when he
10 got off the phone he said the one that's been
11 bitten.
12 Q. Lieutenant Cook said that?
13 A. Right.
14 Q. Okay. Are you saying that Lieutenant
15 Caulfield told Lieutenant Cook to charge the
16 one that's been bitten?
17 A. Right. He asked -- I asked Lieutenant Cook,
18 I said, which one do I charge with burglary.
19 He said, well, I don't know. Let me call
20 Caulfield. So he call Caulfield. Says, hey,
21 which one of these guys do we charge? Of
22 course, I didn't hear that. He hangs up the
23 phone. He says the one that's been bitten.

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1 photographed him. Got -- got some -- some
 2 information on him as to address, where he
 3 works, that type of thing. And then I went
 4 back to Mr. Arnaud. I -- after I had
 5 processed Mr. Hogan, I prepared the burglary
 6 warrant. And was getting ready to take
 7 Mr. Arnaud down to the warrant clerk's office
 8 to secure the warrant against Mr. Hogan. And
 9 at which time he said, listen. Just show me
 10 where to -- where to go and -- so I can get
 11 out of here. So I took him to the warrant
 12 clerk's office. He secured the warrant
 13 against Mr. Hogan for burglary.

14 And after the warrant was finished, I
 15 went down to the warrant clerk's office, got
 16 the warrant, executed it, transported
 17 Mr. Hogan to the county jail, and did my
 18 daily activity report. Whenever you arrest
 19 somebody, just put the details of the -- what
 20 happened and what you charged him where.
 21 That's pretty much it.

22 Q. All right. You said earlier that Officer
 23 Gordon typed out three separate statements.

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1 Do you allege that he said anything false in
 2 the statements?

3 A. After the first one, yes.

4 Q. What do you say was false?

5 A. Well, on the -- and I have a copy of the
 6 tape -- the tape, our dispatch tape. When he
 7 pulled into the parking lot, you know, he
 8 said just what he saw see. 150, I believe is
 9 his unit number. 150, I'm pulling into the
 10 parking lot. There's a vehicle in the
 11 parking lot. Subject just closed the door of
 12 the vehicle, drove off. That's just what he
 13 saw.

14 And I knew then before I got to the
 15 business, based on what he saw, we were
 16 either going to have to get a confession out
 17 of Mr. Hogan or his friends or some kind of
 18 property missing from the business. Or, you
 19 know, maybe an identifiable witness.

20 Q. On the tape transcript, did he say that's all
 21 I saw or --

22 A. He said --

23 Q. -- did he simply say I saw someone getting in

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1 the car?

2 A. He said 150, I -- I'm pulling into the
 3 parking lot of the business now. There's
 4 a -- I observed a blue or a -- the vehicle.
 5 I forgot the description. I observed the
 6 passenger side door close and the vehicle is
 7 now leaving heading towards wherever.

8 You know, had he said -- it could have
 9 been a different story had he said 150, I'm
 10 pulling into the parking lot; there's black
 11 male subject coming from the window or, you
 12 know, standing outside the vehicle.

13 Q. Is it possible that he could have seen that,
 14 just not informed dispatch of it?

15 MR. NELMS: Object to the form.

16 MS. CONNER: You can answer.

17 A. I guess anything's possible.

18 Q. Okay. Go ahead.

19 A. I mean -- I mean, I could have -- I mean,
 20 either way -- either way Mr. Hogan was
 21 getting charged with burglary. I mean
 22 that -- you know, I'm -- I'm a two-year
 23 veteran of the police department. You know,

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1 the way -- the way the rank structure is, you
 2 know, you do something you're not -- you do
 3 something -- you don't do something you're
 4 told to do, you know, you pretty much go find
 5 you another job.

6 Q. Yes, sir. But let's just stick to the
 7 statements right now, though, okay? I'm just
 8 trying to figure out what, if anything, you
 9 alleged was a false statement in the
 10 complaints; and if so, what evidence you have
 11 to support your claim that they're false.
 12 That's all I'm trying to get into right now.

13 A. Okay.

14 Q. Other than the fact that he didn't state all
 15 the details in his statement to dispatch. Do
 16 you have any other evidence that the
 17 statements he made in the allegations he made
 18 in his statements were false?

19 MR. LEWIS: Object to the form.

20 A. He also didn't state them on paper. And his
 21 written statement or his typed statement, not
 22 only did he not state them the first time,
 23 but he didn't state them the second time.

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<p>1 wrote his final statement? I believe you</p> <p>2 said you helped draft a warrant and had to</p> <p>3 take it down to the warrant clerk; is that</p> <p>4 right?</p> <p>5 A. Right.</p> <p>6 Q. And then you transported Mr. Hogan to the</p> <p>7 county --</p> <p>8 A. Right.</p> <p>9 Q. -- county jail?</p> <p>10 A. Well, in -- in between there, I'd walked</p> <p>11 around to Lieutenant Cook's office, showed</p> <p>12 him the final statement and, you know, talked</p> <p>13 about how I didn't feel comfortable with it.</p> <p>14 And, you know, who do I charge. Like I said,</p> <p>15 we normally charge -- we would, had it been a</p> <p>16 normal case, we would have charged all of</p> <p>17 them. However, the objective was to charge</p> <p>18 the guy that was bitten?</p> <p>19 Q. What happened the next day --</p> <p>20 MR. NELMS: Object to the form.</p> <p>21 Q. -- regarding this incident?</p> <p>22 A. The -- of course, it was what they call late</p> <p>23 car, so I was third shift -- late car, third</p>	<p>1 (Brief recess)</p> <p>2 Q. Mr. Pelham, I believe you testified earlier,</p> <p>3 that there was a false alarm at Mr. Arnaud's</p> <p>4 place earlier that evening; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you said that it had also been tripped by</p> <p>7 the same motion detector; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. How did you verify that was caused by the</p> <p>10 same motion detector?</p> <p>11 A. I didn't verify it. That's what Mr. Arnaud</p> <p>12 had told me.</p> <p>13 Q. You asked Mr. Arnaud if that same motion</p> <p>14 detector had set off the alarm earlier?</p> <p>15 A. He had told me the same one.</p> <p>16 Q. Mr. Pelham, how many times did you speak with</p> <p>17 Officer Gordon that night?</p> <p>18 A. Several times.</p> <p>19 Q. Give me your best estimate how many</p> <p>20 conversations you had with him?</p> <p>21 A. Four or five.</p> <p>22 Q. How many conversations did you have with</p> <p>23 Officer Gordon after they had Chad Hogan in</p>
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<p>1 shift detective. So the next day, when I --</p> <p>2 when I got home about seven o'clock, I guess,</p> <p>3 that morning, maybe a little later, maybe a</p> <p>4 little earlier, I was in the bed. My -- one</p> <p>5 my sergeants, Sergeant Tatum, calls me on the</p> <p>6 phone. And I asked -- he said, why in the</p> <p>7 hell didn't you charge all them guys with the</p> <p>8 burglary? And he's jumping down my throat</p> <p>9 about it because he had read my -- read my</p> <p>10 daily activity report, you know, what</p> <p>11 happened. And I told him, you know, exactly</p> <p>12 what happened. And he said, Well, hang on</p> <p>13 Kirk. This -- this is serious. Let me go</p> <p>14 around to Randy Jones' office, which is</p> <p>15 property lieutenant. So they -- he transfers</p> <p>16 the call to Randy's office and they got me on</p> <p>17 speaker phone. Sergeant Tatum says well,</p> <p>18 tell me -- tell me exactly what happened,</p> <p>19 now. And I told him, you know, what happened</p> <p>20 the night before. And they said they would</p> <p>21 take care of it. And I went back to bed.</p> <p>22 MR. WHITEHEAD: Okay. Let's take a</p> <p>23 short break just a second.</p>	<p>1 custody?</p> <p>2 A. Three, maybe.</p> <p>3 Q. Were they all in person or on the radio or --</p> <p>4 A. I think they were all in person. One -- it's</p> <p>5 possible one could have been on the radio.</p> <p>6 If it was, I don't recall it.</p> <p>7 Q. Were they all at the police station?</p> <p>8 A. Yes.</p> <p>9 Q. And forgive me because I'm not familiar with</p> <p>10 exactly how the offices and the structure of</p> <p>11 the department is laid out. Where in the</p> <p>12 building were you when you had these</p> <p>13 conversations with Officer Gordon?</p> <p>14 A. One in Lieutenant Cook's office, once or</p> <p>15 twice in the hallway.</p> <p>16 Q. Where in the hallway? Just out -- right</p> <p>17 outside Cook's office or somewhere else?</p> <p>18 A. Once outside Lieutenant Cook's office, once</p> <p>19 by the copy machine.</p> <p>20 Q. Where is the copy machine?</p> <p>21 A. When you get onto the second floor, it's at</p> <p>22 the end of the hallway, or in the center of</p> <p>23 the hallway. You got -- you take a left to</p>

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<p>1 Tell me to the best of your memory</p> <p>2 specifically what Lieutenant Cook said to</p> <p>3 order you to prepare a warrant despite your</p> <p>4 objections about the credibility of the</p> <p>5 charge?</p> <p>6 MR. NELMS: Object to the form.</p> <p>7 A. He said, Don't worry about it. The burden</p> <p>8 lies on K-9. Work the burglary, and we'll</p> <p>9 let K-9 -- K-9 is the one who's got to</p> <p>10 testify to it in court.</p> <p>11 Q. Anything else that he said?</p> <p>12 A. There were several conversations that night</p> <p>13 with the statements from Officer Gordon and</p> <p>14 all.</p> <p>15 Q. But as to ordering you to go and prepare the</p> <p>16 documents necessary to prepare a warrant of</p> <p>17 arrest or to effectuate a warrant of arrest,</p> <p>18 that's -- my question is limited to that.</p> <p>19 A. Well, after it was determined who we were</p> <p>20 going to charge with -- with burglary, said</p> <p>21 charge -- charge the one that's been bitten</p> <p>22 with burglary. And --</p> <p>23 Q. But that was in response to when you said who</p>	<p>1 Q. I'm just talking about Lieutenant Cook right</p> <p>2 now. Okay?</p> <p>3 A. Right.</p> <p>4 Q. And let me ask you this.</p> <p>5 A. Well, I'm telling you he --</p> <p>6 Q. Oh, okay. I'm sorry.</p> <p>7 A. -- he told me charge the guy with burglary.</p> <p>8 That's answering your question. Simple as</p> <p>9 that. Charge the guy with burglary. Work</p> <p>10 the case. Don't worry about the</p> <p>11 circumstances. K-9 will testify to it. The</p> <p>12 burden will be on them. I can't answer your</p> <p>13 question any more basic than that.</p> <p>14 Q. Did Lieutenant Cook ever order you to sign or</p> <p>15 prepare a warrant or did you interpret his</p> <p>16 statements as an order?</p> <p>17 MR. NELMS: Object to the form.</p> <p>18 A. He told me to do something. That's an order.</p> <p>19 Q. Okay. Lieutenant Caulfield, you said that he</p> <p>20 ordered you to prepare a warrant as well?</p> <p>21 A. He said something to the effect of we're</p> <p>22 going to get this warrant. We're in hot</p> <p>23 water or we're -- he didn't say that. We're</p>
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<p>1 should I charge; is that correct?</p> <p>2 A. Right. But again, I mean, all night, my</p> <p>3 concerns were expressed as far as, you know,</p> <p>4 I wasn't comfortable with it. The -- the</p> <p>5 statements didn't -- didn't add up. They</p> <p>6 were changed, you know, three times. He told</p> <p>7 me to charge the guy with burglary.</p> <p>8 Q. I mean, you're saying he told you to charge</p> <p>9 the guy with burglary, but when? What did he</p> <p>10 say, other than answering that question on</p> <p>11 who do we charge? Charge the guy that got</p> <p>12 bit is what you said. When did he order you</p> <p>13 to go and charge Chad Hogan with burglary</p> <p>14 MR. LEWIS: Object to the form.</p> <p>15 MR. NELMS: Object to the form.</p> <p>16 A. He's my -- he's my lieutenant. When I --</p> <p>17 when I first found that the window hadn't</p> <p>18 been busted out, you know, I told him I -- I</p> <p>19 was coming back to headquarters. There is</p> <p>20 no -- there is no burglary. He said to let</p> <p>21 Sergeant Johnson know. So I did. Sergeant</p> <p>22 Johnson got -- got irate with me and said,</p> <p>23 well, come on back --</p>	<p>1 going to get this warrant to justify the</p> <p>2 bite. And you're going to get us that</p> <p>3 warrant or something like that; telling --</p> <p>4 you know, telling me I'm going -- I'm going</p> <p>5 get the warrant. Now, Mora said, you're a</p> <p>6 police officer. We're all police officers.</p> <p>7 You're not going to stab another police</p> <p>8 officer in the back. You're going to get us</p> <p>9 that warrant.</p> <p>10 And there were two other ones there --</p> <p>11 and I don't know their names -- that were</p> <p>12 expressing their feelings on -- on me getting</p> <p>13 the warrant or me not getting the warrant. I</p> <p>14 don't remember how that was said.</p> <p>15 Q. Did you say Lieutenant Caulfield said we're</p> <p>16 going the get this warrant?</p> <p>17 A. Yes.</p> <p>18 Q. Is how he passed that order to you?</p> <p>19 A. Yes.</p> <p>20 Q. And that Officer Mora basically said the same</p> <p>21 thing, we're going the get this warrant?</p> <p>22 A. Yes, and I wasn't going to stab another</p> <p>23 police officer in the back. We're -- we're</p>